



THE ATTORNEY GENERAL OF TEXAS

GERALD C. MANN
~~XXXXXXXXXXXX~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Dr. George W. Cox
State Health Officer
Austin, Texas

Dear Sir:

Opinion No. 0-2732
Re: Construction of Section 2, Article
700b, Vernon's Annotated Penal Code.

Your recent request for an opinion of this department upon the questions as are herein stated has been received.

Your letter reads in part as follows:

"Many inquiries have been received by this Department regarding Article 700b, P.C. (House Bill 903, 46th Legislature) as to whether or not certain dishwashing and/or sterilizing equipment complies with the law when used in eating establishments.

"These inquiries have been received from city health departments as well as from manufacturers of equipment. Replies have been made according to our interpretation of the law, but the inquiries continue to arrive as if this Department had authority to change the law.

"It has been found that these inquiries fall into two groups. The most persistent inquiry is concerning the sterilization of dishes by means of ultra-violet ray. The other group of inquiries concerns electrically operated dishwashing machines that purport to complete the operation of washing and sterilizing dishes at the same time.

"Your opinion on the following questions would be appreciated:

"1. Does an ultra-violet ray machine such as described in the inclosed circular, marked Exhibit A, comply with Article 700b, Vernon's Annotated Statutes of Texas, 1939?

"2. Do dishwashing machines such as described

in the inclosed circular marked Exhibit B, comply with Article 700b, Vernon's Annotated Statutes of Texas, 1939?

"3. If your answer to question No. 1 is affirmative, must the water used in this machine be held at any certain temperature for any specified length of time?"

Section 2 of Article 700b, Vernon's Annotated Penal Code reads as follows:

"Sec. 2. No person, firm, corporation, or association operating, managing, or conducting any hotel, cafe, restaurant, dining car, drug store, soda water fountain, meat market, bakery, or confectionery, liquor dispensary or any other establishment where food or drink of any kind is served or permitted to be served to the public, shall furnish to any person any dish, receptacle, or utensil used in eating, drinking, or conveying food if such dish, receptacle, or utensil has not been washed after each service until clean to the sight and touch in warm water containing soap or alkali cleanser. After cleaning, all glasses, dishes, silverware, and other receptacles and utensils shall be placed in wire cages and immersed in still bath of clear water heated to a minimum temperature of 170° F for at least three minutes, or two minutes at 180° F. Upon removal from the hot water, all glasses, dishes, silverware, and other receptacles and utensils shall be stored in such a manner as not to become contaminated. Provided that the State Board of Health may approve other equally effective methods of treatment by steam or hot water that meet with the minimum requirements for the safety of the public health, as prescribed by the State Board of Health, that are not inconsistent with this Act. When paper receptacles, ice cream cones, or other single service utensils are used for serving food or drinks, they must be kept in a sanitary manner, protected from dust, flies, and other contamination.

"Provided that the provisions of this Section shall not apply to such establishments as described herein that use electrically operated dishwashing and glasswashing machines, that accomplish these purposes mechanically."

The ultra-violet ray machine, as described in the exhibit marked "A" is called the Steril-Ray Cabinet which consists of a housing, or a cabinet, in the bottom of which are mounted four Sterilamps. The inside walls of the Cabinet are polished corrugated aluminum, which reflect the rays to all surfaces of the glassware placed inside of the Cabinet. The diagram as shown in Exhibit "A" illustrates the manner in which glassware is sanitized. After being cleansed and drained, it is placed, upside down, in a tray provided for that purpose. The tray is then placed in the cabinet and a sliding metal door, or curtain, drawn down. This automatically turns on the Sterilamps and at the same time engaged an automatic time lock which prevents the curtain from being raised for a period of two minutes and ten seconds. At the end of this period, the current is automatically turned off and the time lock released so that the door may be raised and the tray removed. The Steril-Ray Cabinet operates without heat and chemicals. The lamps used in the Cabinet are electric lamps. The Steril-Ray Cabinet is a machine used for sterilization purposes and not for washing or cleaning dishes, etc.

It will be noted that Section 2, Article 700b, supra, provides that after cleaning all dishes, etc. the same shall be placed in wire cages and immersed in still bath of clear water heated to a minimum temperature of 170° F for at least three minutes, or two minutes at 180° F. No doubt, this requirement is for sterilization purposes. However, the State Board of Health may approve other equally effective methods of treatment by steam or hot water that meet with the minimum requirements for the safety of public health, as prescribed by the State Board of Health, that are not inconsistent with the above mentioned act. As above stated, the Steril-Ray Cabinet does not provide the treatment by steam or hot water but provides a treatment by light rays.

Exhibit "A" also shows and describes a machine called a "Roto Glass Washer" which is advertised as a "team mate" for the Steril-Ray Cabinet. We are of the opinion that if there electrically operated machines are used together and accomplish the purposes mechanically as required by Article 700b, supra, then the above mentioned provisions of Article 700b, supra, do not apply, and the State Board of Health may approve the use of said machines if they meet the minimum requirements for the safety of public health, as prescribed by the Board of Health. However, on the other hand, if the Steril-Ray Cabinet is used for sterilization purposes only and not in connection with an electrically operated washing or cleansing machine, whether said machine meets the requirements of Article 700b, supra, with reference to sterilization purposes is a question of fact to be determined by the State Board of Health.

The machine described in Exhibit "B", attached to your inquiry, as we understand, is an electrically operated dish-washing and glasswashing machine and if said machine accomplishes these purposes mechanically, the provisions of Section 2, Article 700b, supra, do not apply. If said machine meets the minimum requirements for the safety of public health, as prescribed by the State Board of Health, we are of the opinion that said Board may approve the use of said machine.

Trusting that the foregoing fully answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/Ardell Williams
Ardell Williams
Assistant

AW:AW:wc

APPROVED SEP 18, 1940
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman